

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

THOMAS JEFFERY KENNEDY,
#536086,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:20-cv-590-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Thomas Kennedy, an inmate confined at the Telford Unit of the Texas Department of Criminal Justice, proceeding pro se, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for disposition.

On January 5, 2021, Judge Love issued a Report and Recommendation recommending that the Court deny the petition and dismiss the case without prejudice for failure to comply with a Court order. Docket No. 8. A copy of the Report was sent to Petitioner, and Petitioner has timely objected. Docket No. 10.

Where a party objects within fourteen days of service of the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en*

banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).


In his objections, Petitioner argues that he believed no further action was required of him due to a November 18, 2020 “Acknowledgement of Receipt” on the docket. Docket No. 10. But this docket entry only confirms that the Clerk of Court received an acknowledgment card indicating that Petitioner received the order directing him to submit the filing fee—not receipt of the filing fee itself. *See* Docket No. 6. To date, no filing fee has been submitted as required.

Further, Petitioner’s argument in his petition that his thirty-year prison sentence has been completed is misguided. Docket No. 1 at 6. Petitioner asserts that time served on parole—which was subsequently revoked—should count towards his thirty-year sentence. *Id.* This is incorrect. *See Rhodes v. Thaler*, 713 F.3d 264, 267 (5th Cir. 2013); *see also Morrison v. Johnson*, 106 F.3d 127, 129 (5th Cir. 1997) (confirming that upon revocation of parole, Texas law does not entitle a defendant to credit for time spent on parole).

Having conducted a de novo review of the Report and the record in this case, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit. The Court therefore **OVERRULES** Petitioner’s objections (Docket No. 10) and **ADOPTS** the Report and Recommendation of the Magistrate Judge (Docket No. 8) as the opinion of the District Court. Petitioner’s petition for habeas corpus is hereby **DISMISSED** without prejudice for failure to comply with a Court order. Finally, the Court sua sponte

DENIES a certificate of appealability as to an appeal of this case, but does not bar Petitioner from refiling these claims.

So **ORDERED** and **SIGNED** this **20th** day of **January, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE